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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/429,581 04/27/95 MCGOVERN

15M1/0205

DAVID C BRUENING
700 KOPPERS BUILDING
436 SEVENTH AVENUE
PITTSBURGH PA 15219-1818

E	940498
EXAMINER	
SZEKELY, P	
ART UNIT	PAPER NUMBER

1511
DATE MAILED: 02/05/96

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☐ This application has been examined ☒ Responsive to communication filed on 11/16/96 ☒ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), 2 days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- | | |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input type="checkbox"/> Notice of Draftsman's Patent Drawing Review, PTO-948. |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449. | 4. <input type="checkbox"/> Notice of Informal Patent Application, PTO-152. |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> |

Part II SUMMARY OF ACTION

1. ☒ Claims 1-10 are pending in the application.
Of the above, claims are withdrawn from consideration.
2. ☐ Claims have been cancelled.
3. ☐ Claims are allowed.
4. ☒ Claims 1-10 are rejected.
5. ☐ Claims are objected to.
6. ☐ Claims are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed has been ☐ approved; ☐ disapproved (see explanation).
12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. ; filed on
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

EXAMINER'S ACTION

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15.

The rejection of claim 1 under 35 USC section 112, second paragraph is withdrawn by the examiner in light of applicant's response.

16.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

17.

Claims 1-10 are rejected under 35 U.S.C. § 103 as being unpatentable over McGovern 3,261,269, McGovern 3,221,615 or McGovern 4,661,378 now Reexamination Certificate 4,661,378 in view of Walaschek 3,835,117, Walaschek 3,897,380, Koleas 5,180,428 or Toho Tennen Gas KK JP-A-52-19855.

18.

Applicant's arguments filed November 16, 1995 have been fully considered but they are not deemed to be persuasive.

19.

The primary references disclose applicant's invention although without the elastomer. The secondary references all show rubber or rubber latex added to pavement coating compositions where it serves to improve better bonding between the dressing and the old

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pavement. For this reason it would have been obvious to one having ordinary skill in the art at the time the invention was made to add an elastomer to the pavement rejuvenator of McGovern. In the absence of unexpected results the rejection is maintained.

20.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

21.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Szekely, whose telephone number is (703) 308-2460. The Examiner can normally be reached on Tuesday through Friday from 7:30 a.m. to 6:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Michl, can be reached on (703) 308-2451. The fax number for this Group is (703) 305-5433.

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Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-2351.



**PETER A. SZEKELY
PRIMARY EXAMINER
GROUP 1500**

Peter Szekely:cb
Patent Examiner

Thursday, February 1, 1996